

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. PR02HB-64452

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| _____ |) | |
| Nicole Perkins, |) | |
| |) | |
| Complainant, |) | <u>Administrative Action</u> |
| |) | |
| v. |) | FINDING OF PROBABLE CAUSE |
| |) | |
| Clifton Taxi and Limousine Service, Inc, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

On January 24, 2014, Nicole Perkins (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Clifton Taxi and Limousine Service, Inc. (Respondent) denied her service based on her disability in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR's ensuing investigation found as follows.

Respondent characterizes itself as providing "24 Hours 7 Days A Week" transportation services for Clifton and surrounding communities to destinations within the tri-state area.

Nicole Perkins, a resident of Jamaica, Queens, New York, is deaf.

During the relevant time period, Complainant routinely used a telephone relay service called *Myiprelay* to help her place telephone calls. She would initiate the process by sending a text message from her cell phone to a relay operator who, in turn, would place telephone calls for her. The operator would explain to the party answering the telephone that he/she was a relay operator assisting someone who is deaf and then continue with the message. In other words, the operator acts as the go-between, communicating through text with the deaf client and verbally with the hearing party. This process continues until the call is concluded.

On January 21, 2014, Complainant was in Clifton waiting for a bus that appeared to be running late. Complainant assumed that the bus was delayed because it was snowing. Concerned that she would be late for an appointment, and numb from the cold weather, she decided to take a taxi. She contacted Respondent via the relay service. Screen shots taken from her cell phone show that the relay operator called Respondent at 12:40 p.m., again at 12:42 p.m., and again at 12:43 p.m. The screen shots show that Respondent's dispatcher disconnected Complainant's first two calls without responding to the operator's announcement that she was assisting a deaf caller. On the third call, the dispatcher responded, "Please stop calling," and hung up a third time. After three unsuccessful attempts to obtain service from Respondent, Complainant gave up.

Respondent's dispatcher, Husseyn "John" Alasfar, responded to the verified complaint by suggesting that perhaps Complainant called a different cab company. He noted as follows:

[T]here happen to be a lots of companies online who happen advertise online using our name which we have no control over. We usually answer our customers with respect and honesty. And just like every cab company who happen to have busy times and it get to a point where we have list of customers who needed transportation service which can lead to delays due the capacity of our fleet. At that time we explain that to our customer and give wait as an option. And as I see Ms or Mr Perkins lives in the state of New York and Clifton is Located in the city of Clifton New Jersey. Misunderstood whether she really called us or called somebody else.

[sic throughout]

DCR contacted Mr. Alasfar by using the same telephone number shown on the screen shots taken by Complainant's cell phone. Once persuaded that Complainant had contacted Respondent and not another cab company, Mr. Alasfar provided possible explanations for why the company declined to provide service to Complainant. He stated that Respondent does not send vehicles out in the snow for insurance reasons. He speculated that he may have hung up on the telephone calls because he thought that they were "robo calls" or sales calls. He also noted that it was possible that he did not have an available cab because all were in use at the time.

The LAD makes it illegal for a place of public accommodation to “refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof,” based on that person’s disability. N.J.S.A. 10:5-12(f). The LAD also requires a business or other public accommodation to “make reasonable accommodations to the limitations of a patron or prospective patron . . . with a disability, including making such reasonable modifications in policies, practices or procedures” that are required to enable the patron to use the services offered to the public, unless the business shows that making the needed accommodations would impose an “undue burden” on its operation. N.J.A.C. 13:13-4.11

At the conclusion of an investigation, the Director is required to determine whether “probable cause” exists to credit a complainant’s allegation of discrimination. Probable cause for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” N.J.A.C. 13:4-10.2. A finding of probable cause is not an adjudication on the merits, but merely an initial “culling-out process” whereby the DCR makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

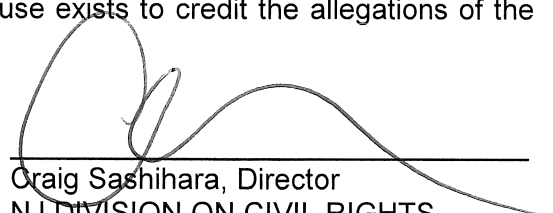
In this case, the Director finds, for purposes of this disposition only, as follows. Respondent is a place of public accommodation as that term is defined by the LAD. On January 21, 2014, Respondent refused to communicate with a deaf customer and deprived her of its services when it terminated three successive phone calls after being told by a relay operator that she was calling on behalf of a deaf caller. Mr. Alasfar stated that he did not recall the incident but offered possible

explanations including two that appeared to contradict each other, i.e., that the company did not send out cabs in inclement weather, and that there may have been no cabs available because all were in use. Although Respondent may be able to persuade an administrative law judge that it was not accepting any calls for cab service when Complainant called due to insurance reasons or because of cab unavailability, it has not produced any evidence to support those theories to date.

In addition, a business that receives requests for service via telephone would be expected to reasonably accommodate deaf patrons by adjusting its telephone protocols to ensure that communications received by a relay service are not mistakenly identified as unwanted robo calls or sales calls. Based on Mr. Alasfar's discussion with DCR, it appears that Respondent has not made its staff aware that deaf or hearing-impaired patrons may communicate using relay or alternate call services, which may take a small amount of additional time to work with. Nor has Respondent presented evidence that it would be an undue burden to stay on the telephone long enough to determine whether a relay call is a legitimate request for service before dismissing it as an unwanted sales solicitation. Because the verified complaint did not explicitly plead a claim for reasonable accommodation, the complaint will be amended to conform to the evidence.

In view of the evidence found during the investigation, the Director finds at this threshold stage in the process that there is a sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56.

WHEREFORE, it is on this 24th day of FEB., 2015, ordered that the verified complaint is hereby amended to allege that Respondent failed to provide a reasonable accommodation to Complainant and that probable cause exists to credit the allegations of the amended complaint.



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS